Scioto Haulers, Inc. *and* United Paperworkers International Union, Local Union No. 1152, AFL-CIO-CLC. Cases 9-CA-18856 and 9-CA-19486

14 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

Upon charges filed by the Union 19 October 1982 and 28 March 1983, the General Counsel of the National Labor Relations Board issued a consolidated amended complaint 27 April 1983 against the Company, the Respondent, alleging that it has violated Sections 8(a)(1), (3), and (5) and 8(d) of the National Labor Relations Act. Although properly served copies of the charges, order consolidating cases, and consolidated amended complaint, the Company has failed to file an answer.

On 20 May 1983 the General Counsel filed a Motion for Summary Judgment. On 26 May 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of the complaint, unless good cause is shown. The consolidated amended complaint states that unless an answer is filed within 10 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Memorandum in Support of Motion for Summary Judgment disclose that the General Counsel by letter dated 10 May 1983 notified the Company that unless an answer was received by 17 May 1983, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Company, an Ohio corporation, is engaged in the business of refuse removal at its facility in Circleville, Ohio, where during the calendar year ending 31 December 1982 it provided services valued in excess of $50,000 for other nonretail enterprises located within the State of Ohio, each of which, in turn, annually sells and ships goods and materials valued in excess of $50,000 from points within the State of Ohio directly to points outside the State of Ohio. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit and the Union's Representative Status*

The following employees of the Company constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All truck drivers, helpers and mechanics employed at [the Company's] Circleville, Ohio facility, but excluding all guards and supervisors as defined in the National Labor Relations Act.

Since 14 October 1980 the Union, by virtue of Section 9(a) of the Act, has been and now is the certified collective-bargaining representative of the unit employees. On or about 4 May 1981 the Union and the Company entered into a collective-bargaining agreement which was to remain in effect until 1 May 1983, and thereafter from year to year, unless either party served a notice on the other party of its desire to terminate or modify said agreement 60 days prior to 1 May 1983.

B. *The 8(a)(1) Violation*

On or about 7 May 1982 the Company, acting through its supervisor and agent, Joseph H. Ogan, at the Company's facility, threatened unit employees with loss of employment unless they agreed to forgo a wage increase provided in the collective-bargaining agreement. Accordingly, we find that the Respondent, by its conduct, violated Section 8(a)(1) of the Act.

[1] In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's complaints. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

C. *The 8(a)(3) and (1) Violation*

On or about 8 November 1982 the Company laid off its employee Rodney D. Crago because he joined, supported, or assisted the Union and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection. Accordingly, we find that the Company, by its conduct, violated Section 8(a)(3) and (1) of the Act.

D. *The 8(a)(5) and (1) and 8(d) Violations*

On or about 7 May 1982 the Company, acting through its supervisor and agent, Joseph H. Ogan, without prior notice to or bargaining with the Union, bypassed the Union and dealt directly with its employees in the above-described unit by soliciting employees to agree to defer a wage increase provided in the applicable collective-bargaining agreement. Further, since on or about 13 December 1982 the Company has refused, without prior notice or bargaining with the Union, to abide by the grievance procedure contained in the collective-bargaining agreement. Accordingly, we find that the Company, by such conduct, violated Section 8(a)(5) and (1) and Section 8(d) of the Act.

Since on or about 7 December 1982 the Company, despite the Union's request, has failed and refused to bargain collectively with it as the exclusive collective-bargaining representative of the employees in the above-described unit with respect to the effects on employees of the Company's decision to terminate its business operations effective 13 December 1982. Accordingly, we find that the Company, by such conduct, violated Section 8(a)(5) and (1) and Section 8(d) of the Act.

On or about 17 December 1982 the Company withdrew its recognition of the Union as the exclusive collective-bargaining representative of the employees in the above-described unit. Accordingly, we find that the Company, by such conduct, violated Section 8(a)(5) and (1) and Section 8(d) of the Act.

CONCLUSIONS OF LAW

1. By threatening employees, on or about 7 May 1982, with the loss of employment unless they agreed to forgo a wage increase provided for in the collective-bargaining agreement, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By discharging employee Rodney D. Crago, on or about 8 November 1982, because he joined, supported, or assisted the Union and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection, the Company has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

3. By bypassing the Union and dealing directly with its employees through the conduct described in paragraph 5 above, without prior notice to, or bargaining with, the Union as the exclusive representative of its employees in the above-described appropriate unit, the Company has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

4. By refusing, since on or about 13 December 1982, to abide by the grievance procedure contained in the collective-bargaining agreement, without prior notice to, or bargaining with, the Union, the Company has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

5. By failing and refusing, since on or about 7 December 1982, to bargain with the Union, upon the Union's request, as the exclusive collective-bargaining representative of the employees in the above-described appropriate unit with respect to the effects on employees of its decision to terminate its business operations, the Company has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

6. By withdrawing its recognition, on or about 17 December 1982, of the Union as the exclusive collective-bargaining representative of the employees in the above-described appropriate unit, the Company has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

With respect to the Respondent's unlawful failure to bargain with the Union about the effects of its decision to close its Circlevile, Ohio business operations, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining

power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor pactices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of the shutdown on its employees, and shall accompany our order with a limited backpay requirement designed both to make the employees whole for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so in this case by requiring that the Respondent pay backpay to its employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). The Respondent shall pay employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) The date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the plant shutdown on its employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the date of this decision, or to commence negotiations within the 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from 13 December 1982, the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than the amount these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ.

With respect to the 8(a)(3) and (1) discharge of employee Rodney D. Crago, the Respondent shall make the estate of Crago whole for any loss of earnings he may have suffered as a result of his layoff between 8 November 1982 and 10 December 1982, plus interest, with backpay to be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

ORDER

The National Labor Relations Board orders that the Respondent, Scioto Haulers, Inc., Circleville, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate bargaining unit:

> All truck drivers, helpers and mechanics employed at [Respondent's] Circleville, Ohio facility, but excluding all guards and supervisors as defined in the National Labor Relations Act.

(b) Refusing to bargain in good faith about the effects on the employees in the above-described appropriate unit of the decision to terminate its business operations.

(c) Bypassing the Union and dealing directly with its employees concerning terms and conditions of employment without prior notice to, or bargaining with, the Union as the exclusive representative of the employees in the above-described appropriate unit.

(d) Refusing to honor and abide by the collective-bargaining agreement with the Union, effective by its terms from on or about 4 May 1981 until 1 May 1983, and thereafter from year to year, including the grievance procedure provided therein.

(e) Discharging or otherwise discriminating against any employee for supporting United Paperworkers International Union, Local No. 1152, AFL-CIO-CLC, or any other union.

(f) Threatening employees with loss of employment unless they agree to forgo wage increases provided for in the collective-bargaining agreement.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the appropriate unit described in paragraph 1(a) above concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) On request, bargain with the Union as the exclusive representative of the employees in the unit described in paragraph 1(a) above regarding the effects of closing its Circleville, Ohio business operations on its employees and, if an understanding is

reached, embody such understanding in a signed agreement.

(c) Honor and abide by the collective-bargaining agreement with the Union, effective by its terms from on or about 4 May 1981 until 1 May 1983, and thereafter from year to year, including the grievance procedure provided therein.

(d) Pay the employees laid off on 13 December 1983 their normal wages for the period set forth in the remedy section of this decision.

(e) Make the estate of Rodney D. Crago whole for any loss of earnings and other benefits he may have suffered as a result of the discrimination practiced against him, in the manner set forth in the remedy section of this decision.

(f) Remove from its files any reference to the unlawful discharge of Rodney D. Crago on 8 November 1982, and notify his estate in writing that this has been done and that the discharge will not be used against his heirs in any way.

(g) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Post at its facility in Circleville, Ohio, and forthwith mail to all affected employees, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. A copy of said notice, signed in the same manner, shall be immediately mailed to the last known address of each person formerly employed at Scioto Haulers, Inc., as described in subparagraphs 2(d) and (e) of this Order.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to recognize and bargain with United Paperworkers International Union, Local Union No. 1152, AFL-CIO-CLC, as the exclusive representative of the employees in the following appropriate bargaining unit:

> All truck drivers, helpers and mechanics employed at the Employer's Circleville, Ohio facility, but excluding all guards and supervisors as defined in the Act.

WE WILL NOT refuse to bargain in good faith about the effects on the employees in the appropriate unit of the decision to close the facility.

WE WILL NOT bypass the Union and deal directly with our employees concerning terms and conditions of employment, without prior notice to, or bargaining with, the Union as the exclusive representative of the employees in the appropriate unit.

WE WILL NOT refuse to honor and abide by the collective-bargaining agreement including the grievance procedure provided therein.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting United Paperworkers International Union, Local Union No. 1152, AFL-CIO-CLC, or any other union.

WE WILL NOT threaten employees with loss of employment unless they agree to forgo wage increases provided for in the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit.

WE WILL, on request, bargain with the Union regarding the effects of closing our Circlevile, Ohio operations, and put in writing and sign any agreement reached.

WE WILL honor and abide by the collective-bargaining agreement, including the grievance procedure provided therein.

WE WILL pay the employees who were employed at the Circleville operations their normal wages for a period required by this Decision and Order.

WE WILL make whole the estate of Rodney D. Crago for any loss of earnings suffered as a result

of his layoff between 8 November 1982 and 10 December 1982, plus interest.

WE WILL notify the estate of Rodney D. Crago that we have removed from our files any reference to his discharge and that the discharge will not be used against his heirs in any way.

SCIOTO HAULERS, INC.